

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
November 13, 2002

ITEM: 8a

SUBJECT: Administrative Assessment of Civil Liability (ACL) against Kemper Insurance Company for failure to pay annual storm water fees for the facility located at the southeast corner of Winchester Rd. and Ynez Rd., Temecula, Ca. (Tentative Order No. R9-2002-0286) (*Vicente Rodriguez*)

PURPOSE: To consider the wavier of right to request a hearing from Kemper Insurance Company, the comments received during the 30-day comment period, and an order adopting assessment of Administrative Civil Liability of \$2,609 as proposed in Complaint No. R9-2002-0193. If the Regional Board does not adopt the tentative order, the matter will proceed to a hearing at a future Regional Board meeting.

PUBLIC NOTICE: The 30-day comment period for this matter began September 23, 2002 and ended October 23, 2002. The 30-day comment period was noticed on the Regional Board's October agenda, the Regional Board's web page, and in three local newspapers. The State Water Control Board's (State Board) Water Quality Enforcement Policy recommends that a public comment period should be provided prior to the settlement of any ACL.

DISCUSSION: The item before the Regional Board is to consider the adoption of an order assessing civil liability. On August 2, 2002, *Complaint No. R9-2002-0193 for Administrative Civil Liability* was issued by the Regional Board Executive Officer to the discharger, Kemper Insurance Company. The discharger is alleged to have failed to pay the required annual fees in the amount of \$250 for each of the two fiscal years 2001-2002 and 1998-1999 for a total of \$500.

The discharger, upon receipt of Complaint No. R9-2002-0193, paid the proposed ACL amount of \$2,609 for failure to pay the annual storm water fees and waived the right to request a hearing before the Regional Board. The discharger has also paid the outstanding annual storm water fees of \$500.

BACKGROUND

The Kemper Insurance Company construction site is located at the southeast corner of Winchester Rd. and Ynez Rd., Temecula, Riverside County, see the attached map (Supporting Document No. 1). The discharger holds waste discharge requirements prescribed by the Regional Board and, therefore, shall pay an annual fee pursuant to Section 13260 of the California Water Code. The annual fees were computed in accordance with Water Code Section 13260 and Title 23, California Code of Regulations, Section 2200. The violation for non-payment is deemed to have occurred on the following days:

1. Fiscal Year 2001-2002 from August 8, 2001 to July 31, 2002, or 357 days,
2. Fiscal Year 1998-1999 from November 17, 1998 to July 31, 2002, or 1,352 days.

As of October 31, 2002, according to the Annual Fee Remittance System database maintained by the State Board's Division of Administrative Services-Accounting Fee Unit, the outstanding annual fees of \$500 for the fiscal year 2001-2002 and 1998-1999 annual storm water construction permit have been paid. This site is now fully in compliance with the outstanding fees. This site is an active construction site and continues to be regulated under the State Water Resource Control Board's storm water construction permit.

Civil liability should be imposed on Kemper Insurance Company by the Regional Board in the amount of \$2,609 for the violations cited above. The civil liability is based on a greater emphasis for the first 90 days after the fees were due (assessed at \$5 per day for the first 90 days, \$2 per day from 90 to 180 days and \$1 per day after 180 days late). This is the same rate used in other ACL complaints issued on the same date for unpaid storm water annual fees. The calculated average liability per day is approximately \$1.53.

No comments were received during the comment period.

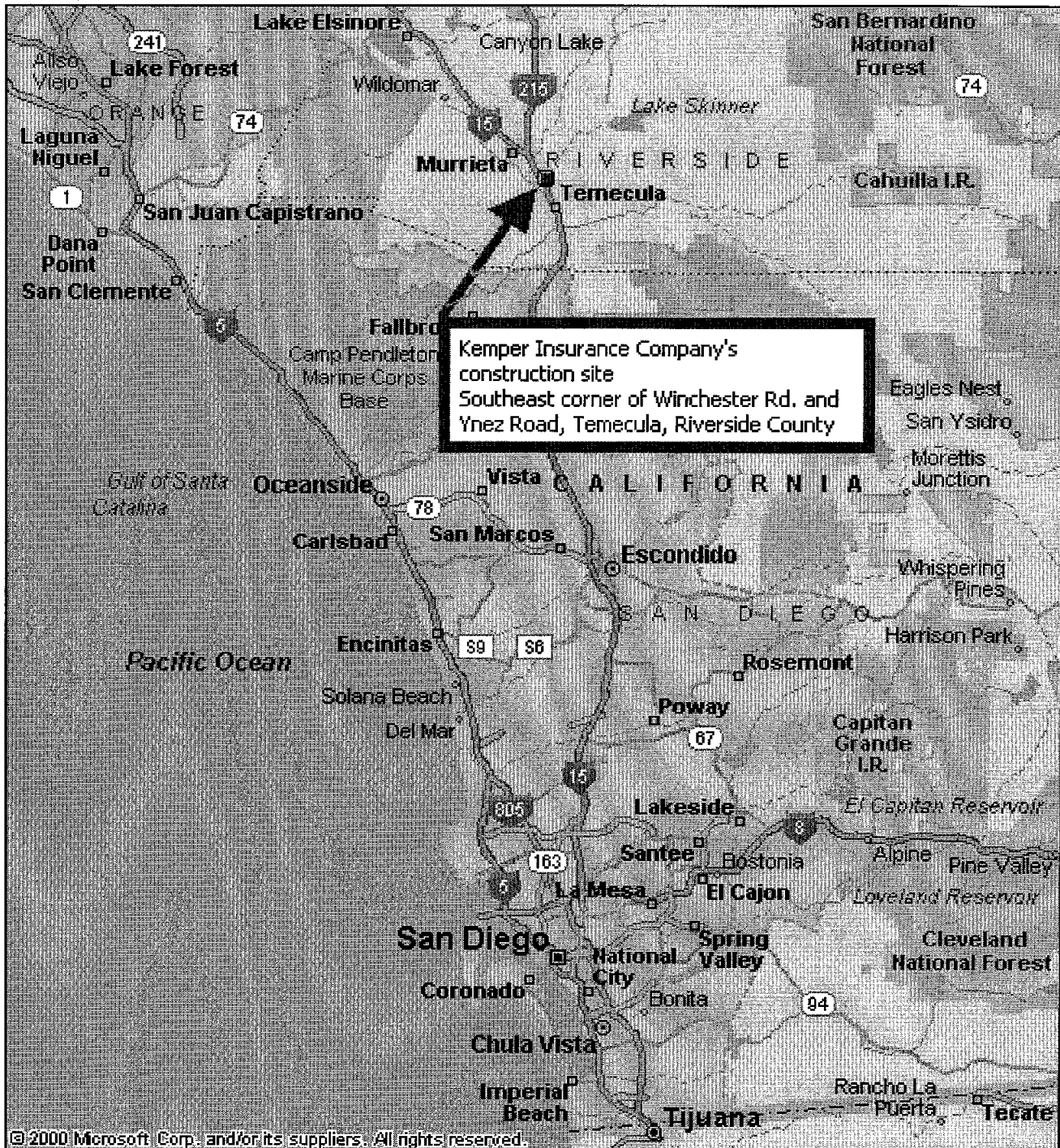
LEGAL CONCERNS: None.

SUPPORTING

DOCUMENTS:

1. Location Map of Construction Site
2. Tentative Order No. R9-2002-0286
3. Waiver of Hearing Form signed by discharger Sept. 6, 2002
4. Complaint No. R9-2002-0193 dated August 2, 2002

RECOMMENDATION: Adopt tentative Order No. R9-2002-0286.



Kemper Insurance Company's construction site
Southeast corner of Winchester Rd. and Ynez Road, Temecula, Riverside County

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**TENTATIVE
ORDER NO. R9-2002-0286**

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
KEMPER INSURANCE COMPANY
FOR FAILURE TO PAY ANNUAL FEES**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds the following:

1. Kemper Insurance Company violated Section 13260(d) of the California Water Code which requires that each person for whom waste discharge requirements have been prescribed pursuant to Water Code Section 13263 shall pay an annual fee according to a fee schedule established by the State Water Resources Control Board (State Board). Kemper Insurance Company, hereinafter discharger, is regulated under WQ Order No. 98-07, Construction Storm Water Permit. The discharger's total unpaid annual storm water fees in this matter were in the amount of \$500 for the construction site located at the southeast corner of Winchester Rd. and Ynez Rd., Temecula, Riverside County.
2. On August 2, 2002, the Executive Officer, in *Complaint No. R9-2002-0193 for Administrative Civil Liability (ACL)*, proposed imposition of civil liability in the amount of \$2,609 for the violations alleged in Complaint No. R9-2002-0193.
3. The discharger, upon receipt of Complaint No. R9-2002-193, paid the proposed ACL amount of \$2,609 for failure to pay the annual storm water fees and waived the right to request a hearing before the Regional Board. The discharger has also paid the outstanding annual storm water fees of \$500.
4. On November 13, 2002, the Regional Board held a hearing to solicit public participation in this matter, and considered the comments of interested persons regarding adoption of this Order.
5. Consideration of the factors prescribed in California Water Code Section 13327 based upon information available to the Regional Board prior to the hearing and described in greater detail in Complaint No. R9-2002-0193 supports assessment of civil liability pursuant to Water Code section 13263 in the amount of \$3,000.
6. The adoption of this Order is an appropriate resolution of the violations alleged in Complaint No. R9-2002-0193 because of the following reasons:

November 13, 2002

- a. The assessment of \$2,609 is a sufficient amount of liability to deter this discharger and other dischargers from not paying annual fees in the future.
 - b. The assessment of \$2,609 is consistent with the State Board enforcement assessment matrix for violations characterized as Moderate compliance significance and Minor environmental significance.
7. The Regional Board incurred costs totaling \$1,280, which includes preparation of enforcement documents, and public hearings.
 8. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Division 13, Chapter 3, Section 21000 et seq.) in accordance with Section 15308, Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED, that pursuant to Section 13261(b) of the California Water Code, that civil liability be imposed on the discharger, Kemper Insurance Company in the amount \$2,609.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on November 13, 2002.

TENTATIVE

JOHN H. ROBERTUS
Executive Officer



Winston H. Hickox
Secretary for
Environmental
Protection

California Regional Water Quality Control Board

San Diego Region

Internet Address: <http://www.swrcb.ca.gov/rwqcb9/>
9174 Sky Park Court, Suite 100, San Diego, California 92123
Phone (858) 467-2952 • FAX (858) 571-6972



Gray Davis
Governor

ITEM 8a-3

WAIVER OF RIGHT TO A HEARING

In the Matter Of:

Kimberley Wright
Kemper Insurance Company
1 Kemper Drive
Long Grove, IL 60049-0001

Administrative Civil Liability
Complaint No. R9-2002-0193
\$2,609

By signing below, I agree to waive my right to a hearing before the San Diego Regional Water Quality Control Board with regards to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

Michael A. Finell, Jr.
Signature

TREASURER
Title

9/6/02
Date

Signature

Title

Date

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

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Kemper Public Hearing Waiver R9-2002-0193.doc

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

In the Matter of)	
)	
Kimberley Wright)	Complaint No. R9-2002-0193
Kemper Insurance Company)	For
1 Kemper Drive)	Administrative Civil Liability
Long Grove, IL 60049-0001)	
_____)	

YOU ARE HEREBY GIVEN NOTICE THAT:

- 1) Kemper Insurance Company is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), may impose liability under Section 13261 (a) and (b) of the California Water Code.
- 2) If Kemper Insurance Company intends to waive its right to a public hearing before the Regional Board, an authorized agent must sign and return the enclosed waiver form with a cashier's check for the amount of \$2,609 by 5:00 P.M., Tuesday, August 20, 2002.
- 3) A public hearing on this matter has been scheduled at the Regional Board meeting on

**September 11, 2002,
at the Regional Board Meeting Room,
9174 Sky Park Court, Suite 100, San Diego, California.**
- 4) The meeting is scheduled to begin at 9:00 a.m. A copy of the agenda for the September meeting, which provides information pertaining to submittal of information and hearing procedures, will be sent to you under separate cover toward the end of August 2002.
- 5) At the hearing, Kemper Insurance Company will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board.
- 6) At the hearing, the Regional Board will determine the validity of the allegations contained herein, and if the allegations are found to be true, will consider whether or not to assess civil liability in the amount proposed by this complaint, or in some other amount. The Regional Board may refer the matter to the Attorney General for judicial assessment of civil liability (with higher maximum liabilities for each violation).

ALLEGATIONS

- 7) Kemper Insurance Company is alleged to have violated Section 13260(d) of the California Water Code which requires that each person for whom waste discharge requirements have been prescribed pursuant to Water Code Section 13263 shall pay an annual fee according to a fee schedule established by the State Water Resources Control Board (State Board). The outstanding fees total \$500 for the facility located at the South-West corner of Winchester Road, Temecula.
- 8) The following facts are the basis for the alleged violations in this matter:
- 9) Waste discharge requirements for discharges of storm water associated with construction activities have been issued to Kemper Insurance Company and an annual storm water fee has been assessed accordingly. Kemper Insurance Company was sent the following invoices:
 - a) Invoice No. 1981 for the amount of \$250 sent July 9 and due Aug. 8, 2001 for Fiscal Year 2001 – 2002 (FY 2001)
 - i) First late notice sent on September 11, 2001
 - ii) Second late notice sent on December 7, 2001
 - b) Invoice No. 845 for the amount of \$250 sent Oct. 18 and due Nov. 17, 1998 for Fiscal Year 1998 – 1999 (FY 1998)
 - i) First late notice sent on December 22, 1998
 - ii) Second late notice sent on January 21, 1999
- 10) The violation for non-payment is deemed to have occurred for a total of 1,709 days based on the following days:

Fiscal Year 2001-2002 from August 8, 2001 to July 31, 2002, or 357 days,
Fiscal Year 1998-1999 from November 17, 1998 to July 31, 2002, or 1,352 days.
- 11) State Board records indicate that Kemper Insurance Company has failed to make payment in response to the invoices and notices.
- 12) On April 24, 2002, the Regional Board sent Kemper Insurance Company a staff enforcement letter that noted the two outstanding annual fees and notified Kemper Insurance Company that failure to pay required annual fees is a violation of provisions of the California Water Code and subject to Administrative Civil Liability Complaint assessing monetary penalties.

MAXIMUM ACL

- 13) Pursuant to Section 13261(b), the total maximum assessment for Kemper Insurance Company is civilly liable is \$1,709,000 (\$1,000 for each day of violation) for the violation cited above.

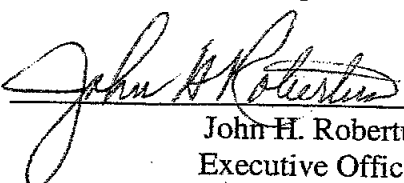
Pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy, all ACLs that are not Mandatory Minimum Penalties should be assessed at a level that at a minimum recovers the economic benefit.

Therefore, the monetary liabilities should be calculated to negate any economic benefit realized by the discharger as a result of the violation. While the fees have remained outstanding, the discharger has continued to enjoy the privilege of discharging waste. During this time, other dischargers have paid the required fees. The discharger has gained an economic benefit in the amount of the fees (\$500) and interest (approximately \$130, assuming 10% per year) which might have accrued on that amount. Therefore, the proposed civil liability shall be within the range of \$630 and \$1,709,000.

PROPOSED CIVIL LIABILITY

- 14) The proposed amount of civil liability attributed to each violation was determined by taking into consideration the factors specified in Section 13367, economic savings, as well as the maximum civil liability that the Regional Board may assess. **Civil liability should be imposed on Kemper Insurance Company by the Regional Board in the amount of \$2,609 for the violations cited above.**
- 15) The proposed complaint (\$2,609) is a separate amount and does not include the amount due (\$250) for payment of the delinquent annual storm water fees
- 16) The Regional Board costs for investigating this incident were approximately \$640.

Dated this 2nd day of August, 2002

By: 
John H. Robertus
Executive Officer